

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:09-CR-125-1BR
No. 5:14-CV-805-BR

RODERICK ARNEZ WHITAKER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ORDER

This matter is before the court on petitioner's motion pursuant to 28 U.S.C. § 2255. (DE # 47.)

As directed, the government filed a response to the motion, conceding that petitioner has a meritorious claim of actual innocence as to his conviction for being a felon in possession of a firearm ("Count One"). (DE # 55.) Because petitioner also has a conviction for conspiracy to distribute and possess with the intent to distribute more than 50 grams of cocaine base ("Count Three"), the court appointed the Office of the Federal Public Defender ("FPD") to represent petitioner with regard to the effect, if any, that the vacation of petitioner's conviction and sentence on Count One has on his sentence on Count Three. (DE # 56.) The FPD, on behalf of petitioner, filed a memorandum in support of the § 2255 motion, requesting that the court vacate the conviction on Count One and acknowledging that petitioner's sentence on Count Three would remain intact. (DE # 58, at 2 n.2, 7.) The government did not file a response to the memorandum, and the time within which to do so has expired.

Accordingly, the § 2255 motion is ALLOWED. Petitioner's conviction and sentence on

Count One is VACATED. Petitioner's conviction and sentence on Count Three remains.

This 2 April 2015.



W. Earl Britt
Senior U.S. District Judge